

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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SANTANA CLINE d/b/a THE DARK  
MONKEY,

Plaintiff,

vs.

ETSY, INC.; *et.al.*,

Defendants.

Case No. 2:15-cv-2115-JCM-VCF

**ORDER**

NOTICE OF FAILURE TO ARBITRATE (ECF No. 44)

Before the court are Cline's notice of failure to arbitrate (ECF No. 44) and Etsy's response (ECF No. 45). Although Cline named her filing a notice, she asks this court to either lift the stay or order Etsy to initiate arbitration proceedings. (ECF No. 44) This court thus treats Cline's filing as a motion.

Cline asserts that there is basis to initiate arbitration. (*Id.*) She alleges that Etsy has only provided her with a blurry, unsigned copy of the arbitration agreement, and that this document cannot serve as the basis of arbitration. (*Id.*)

Cline has raised, and this court has rejected, a similar argument before. In her opposition to Etsy's motion to compel arbitration, Cline argued that there was no enforceable contract and thus no enforceable arbitration provision. (ECF No. 38) This court however found that Etsy's Terms of Use, which Cline had agreed to in order to use Etsy's services, was an enforceable contract under New York law. (ECF No. 40)

Contrary to Cline's belief that "[t]he ability to start proceedings under JAMS is to provide the signed contract containing the arbitration clause," she may initiate arbitration without a signed contract. She may initiate JAMS arbitration by showing the existence of (1) an enforceable post-dispute arbitration agreement; (2) an enforceable pre-dispute arbitration agreement; (3) written confirmation that

1 the parties orally agreed to arbitration; or (4) “a copy of a court order compelling Arbitration by JAMS.”  
2 JAMS Comprehensive Rules & Procedures, Rule 5: Commencing Arbitration, available at:  
3 [https://www.jamsadr.com/rules-comprehensive-arbitration/#Rule 5](https://www.jamsadr.com/rules-comprehensive-arbitration/#Rule%205) (last visited Aug. 16, 2016).

4 Cline has a pre-dispute arbitration agreement, Etsy’s Terms of Use, and a court order compelling  
5 arbitration. (ECF No. 43) She may use either to initiate arbitration.

6 ACCORDINGLY, and for good cause shown,

7 IT IS HEREBY ORDERED that Cline’s motion for failure to arbitrate (ECF No. 44) is DENIED.

8 IT IS SO ORDERED.

9 DATED this 16th day of August, 2016.

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13 CAM FERENBACH  
14 UNITED STATES MAGISTRATE JUDGE  
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